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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-200177.2

DATE: October 5, 1981

MATTER OF: Lu-San Enterprises, Inc.

DIGEST:

Protest filed with GAO more than one year after protester received notification of Small Business Administration denial of protest over the award of an 8(a) contract is untimely and will not be considered on its merits.

Lu-San Enterprises, Inc. protests action taken by the Small Business Administration (SBA) in the award of a contract for custodial services for Fort Monmouth, New Jersey under the SBA's 8(a) program. The requirement had previously been set aside for small business. Lu-San was the incumbent small business contractor. Lu-San contends that SBA erroneously assessed the impact that removing the requirement from competition would have on the viability of Lu-San as a business enterprise. We will not consider this protest.

In August 1980 Lu-San filed a protest with the SBA. In September 1980, Lu-San submitted a copy of that protest to our Office, but did not request a ruling by the Comptroller General. As we informally advised Lu-San at that time, section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), as amended by Public Law 95-507, October 24, 1978, 92 Stat. 1757, authorizes the SBA to enter into contracts with any Government agency with procurement powers and to arrange for the execution of such contracts by letting subcontracts to socially and economically disadvantaged small businesses. In view of the broad discretion authority afforded SBA under the Small Business Act, we do not generally review determinations to set aside contracts for section 8(a) awards unless it appears that the determinations resulted from fraud or bad faith on the part of Government officials. E-Z Tight, Inc., 59 Comp. Gen. 122 (1979), 79-2 CPD 394.

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Lu-San now contends that the SBA's impact study was conducted in bad faith because SBA, among other things, contravened its standard operating procedures, underestimated the amount of business Lu-San would lose with respect to this particular procurement, and failed to take into account that several other contracts between Lu-San and the Government would soon expire. Possible bad faith is not shown, however, by an allegation that standard operating procedures have not been followed since SBA may waive or revoke them. Tidewater Protective Services, Inc., B-190957, January 13, 1978, 78-1 CPD 33. Additionally, Lu-San's other contentions merely indicate disagreement between Lu-San and SBA as to the factors that must be considered in evaluating impact; they do not establish bad faith on the part of SBA officials. Thus, we do not believe that Lu-San has established a basis upon which to question SBA's determination.

In any event, we will not consider Lu-San's contentions since they were untimely filed. SBA denied Lu-San's protest over a year ago. This denial constituted the initial adverse agency action concerning the protest with the SBA. Our Bid Protest Procedures state that if a protest has been filed initially with the contracting agency, any subsequent protest to the GAO must be filed within 10 working days of formal or constructive notification of initial adverse agency action to be considered timely. Because Lu-San did not file a protest with our Office until September 4, 1981, it is untimely. 4 C.F.R. § 21.2(a) (1981); Coventry Manufacturing Company, B-201626, January 22, 1981, 81-1 CPD 41.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel